

The Right to Counsel in State Court

Clarence Earl Gideon (1910–1972), *Gideon v. Wainwright*,
Abe Fortas (1910–1982)

The Sixth Amendment provides that “in all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.” It remains silent, however, as to cases in which the defendant is financially unable to retain an attorney.

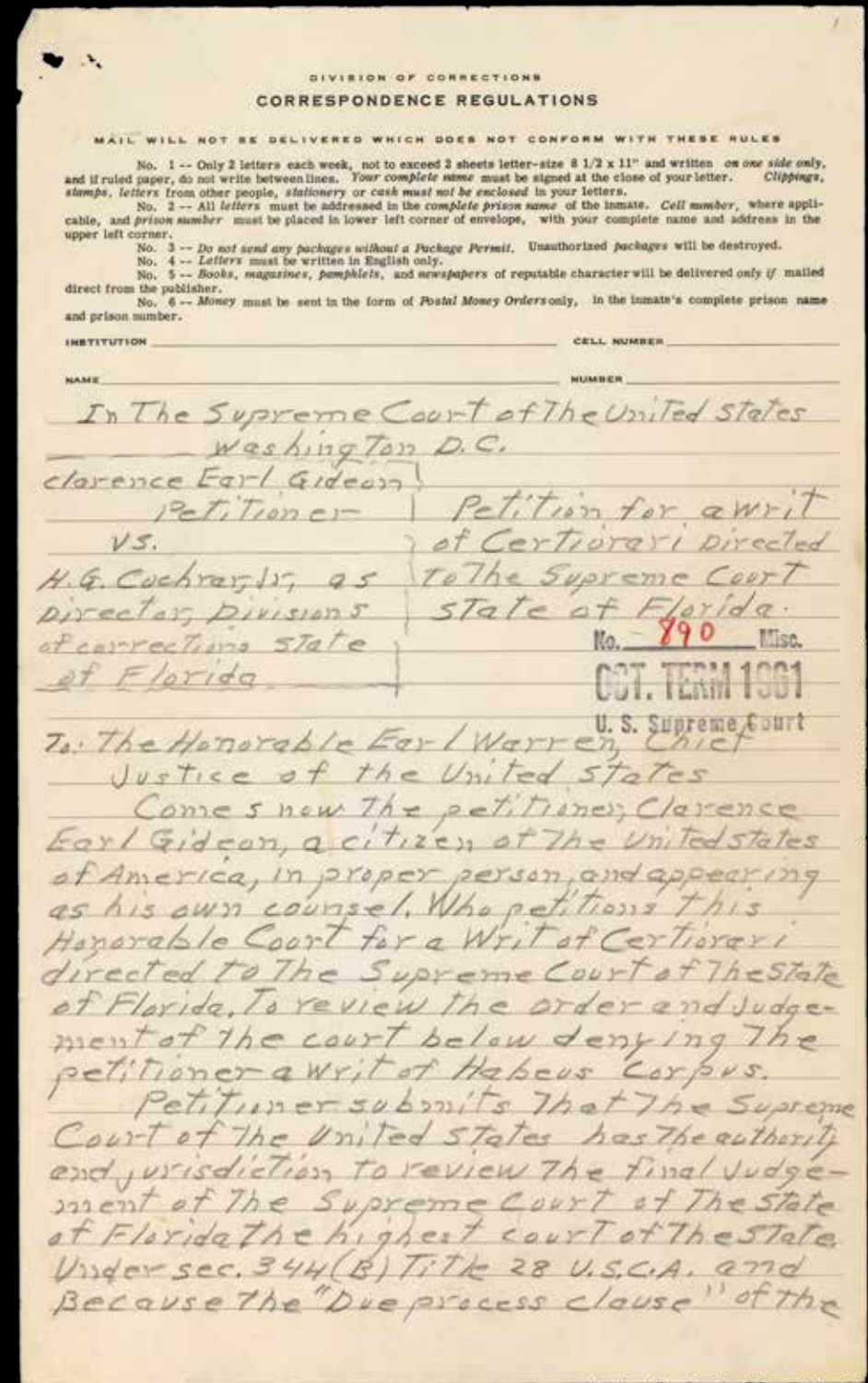
The jurisprudence surrounding the provision of counsel to criminal defendants has evolved over the years. In 1932, the Supreme Court established that in cases subject to the death penalty, the Fourteenth Amendment’s due process clause required states to provide indigent defendants with defense counsel. Six years later, the Court held that the Sixth Amendment required appointment of counsel in all federal felony prosecutions. In 1942, it declined to extend that holding, ruling in *Betts v. Brady* that the Sixth Amendment didn’t require states to provide appointed counsel to defendants in non-capital cases, absent “special circumstances.” More than two decades passed before the court formally overruled *Betts* in *Gideon v. Wainwright*, which law professor James Tomkovicz has called “one of the most significant and well known of the decisions that collectively brought about a revolution in constitutional criminal procedure.”

Clarence Earl Gideon, “not one of God’s nobler creatures,” according to political science professor Tinsley Yarbrough, was convicted in Florida of breaking and entering with intent to commit larceny. Although this was Gideon’s fifth felony conviction, none of his crimes involved violence. His pretrial request for a court-appointed lawyer had been denied. When the Florida Supreme Court denied him relief, Gideon composed a handwritten, five-page petition for a writ of certiorari to the U.S. Supreme Court, seeking review.

Gideon composed the petition without the assistance of counsel, so there’s a measure of irony in the Court’s decision to grant it. The Court’s rules required counsel for all parties, so the court appointed Abe Fortas, later a Supreme Court justice, to represent Gideon on his appeal. On March 18, 1963, the Court unanimously overturned Gideon’s conviction, holding that the Sixth Amendment required states to provide counsel to all felony defendants. Less than a decade later, the Court expanded its ruling to cover misdemeanor defendants as well.

SEE ALSO The Fourteenth Amendment (1868); Miranda Warnings (1966).

Page one of Gideon’s petition to the Supreme Court, which appointed counsel to represent Gideon on the appeal.



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